

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

JOHNNIE E LAIRD

Claimant,

and

OBERG FREIGHT CO

Employer.

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HEARING NUMBER: 10B-UI-06115

**EMPLOYMENT APPEAL BOARD
DECISION**

SECTION: 10A.601 Employment Appeal Board Review

D E C I S I O N

FINDINGS OF FACT:

A hearing in the above matter was held June 9, 2010. The administrative law judge's decision was issued August 2, 2010. The administrative law judge's decision has been appealed to the Employment Appeal Board. The record of the hearing before the administrative law judge at p. 37, lines 19-34 indicates that the administrative law judge recessed the hearing in order that the claimant, who did not have a copy of the police report, could get a copy for his review and response at a later date. The hearing was closed and the matter was never reopened.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 10A.601(4) (2009) provides:

5. Appeal board review. The appeal board may on its own motion affirm, modify, or set aside any decision of an administrative law judge on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The appeal board shall permit such further appeal by any of the parties interested in a decision of an administrative law judge and by the representative whose decision has been overruled or modified by the administrative law judge. The appeal board shall review the case pursuant to rules adopted by the appeal board. The appeal board shall promptly notify the interested parties of its findings and decision.

Since the record of the hearing lacks testimony from the claimant regarding the police report upon which his termination was based and for which the administrative law judge, initially, held the record open, we find that the record is incomplete for review. Therefore, this matter must be remanded for the limited purpose of allowing the claimant an opportunity to respond to the police report he did not have at the hearing.

DECISION:

The decision of the administrative law judge dated August 2, 2010, is not vacated at this time. This matter is remanded to an administrative law judge in the Workforce Development Center, Appeals Section, to reopen the record for the limited purpose of allowing the claimant to respond. The administrative law judge shall conduct this limited hearing following due notice. After the hearing, the administrative law judge shall issue a new decision, which provides the parties appeal rights.

Monique F. Kuester

Elizabeth L. Seiser

AMG/fnv

DISSENTING OPINION OF JOHN A. PENO:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.

John A. Peno

AMG/fnv